

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

KIMBERLY MITCHELL,

10-CV-141-BR

Plaintiff,

OPINION AND ORDER

v.

JOHN E. POTTER, Postmaster  
General, United States Postal  
Service,

Defendant.

ERIC J. FJELSTAD  
Smith & Fjelstad  
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Gresham, OR 97030  
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Attorneys for Plaintiff

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Attorneys for Defendant

**BROWN, Judge.**

This matter comes before the Court on Defendant's Motion (#10) to Dismiss the Second and Third Claims for Relief in Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and (6). For the reasons that follow, the Court **GRANTS** Defendant's Motion.

On February 8, 2010, Plaintiff filed a Complaint alleging, among other things, claims for violation of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.* and violation of the Oregon Worker's Compensation Act, Oregon Revised Statute § 659A.040.

Defendant moves to dismiss Plaintiff's ADA claim on the ground that claims for disability discrimination against the United States must be brought pursuant to the Rehabilitation Act, 29 U.S.C. § 701, *et seq.* See *Johnston v. Horne*, 875 F.2d 1415, 1420-21 (9<sup>th</sup> Cir. 1989). Defendant also moves to dismiss Plaintiff's claim for violation of the Oregon Worker's Compensation Act on the ground that it is preempted by the Civil Service Reform Act, 5 U.S.C. §§ 1214 and 2302. See 5 U.S.C. § 2302(b)(1)(D).

Plaintiff concedes Defendant's Motion and requests leave to amend her Complaint to allege a claim for violation of the Rehabilitation Act rather than a claim for violation of the ADA. Defendant does not oppose Plaintiff's request for leave to amend

her Complaint.

**CONCLUSION**

For these reasons, the Court **GRANTS** Defendant's Motion (#10) to Dismiss the Second and Third Claims for Relief in Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) and grants Plaintiff leave to amend her Complaint no later than **October 18, 2010**, to allege a claim for violation of the Rehabilitation Act.

IT IS SO ORDERED.

DATED this 4<sup>th</sup> day of October, 2010.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District